



**BOARD of ADJUSTMENT**

**Town of Hollis**

Seven Monument Square  
Hollis, New Hampshire 03049  
Tel. 465-2209 FAX 465-3701

**Minutes of February 28, 2019**

Meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:06 pm.

**MEMBERS OF ZONING BOARD OF ADJUSTMENT:** Brian Major, Chairman; Jim Belanger, Vice Chairman; Regular Members –Cindy Robbins-Tsao, Rick MacMillan and Susan Durham; Alternate Members –Drew Mason, Kat McGhee, Bill Moseley and Meredith West.

Major explained policies and procedures.

**Case ZBA 2019-001**

The application of Amos White, property owner, for a Variance to Section XG.4.e, Minimum Rear Yard Width, of the Zoning Ordinance to approve an existing deck, where the landing & stairs are 27 feet from the rear setback width (required 35 feet) located at 304 Silver Lake Road. (Map 041, Lot 060) in the Residential Agricultural Zone

*Belanger moved for a vote from the Zoning Board of Adjustment (ZBA) to determine if case 2019-001 had any regional impact.*

*Seconded by Tsao.*

*The vote was 5 – 0 that case 2019-001 had no regional impact.*

Jeffrey Zall, Attorney, 221 Main Street, Nashua NH, presented case 2019-001 on behalf of the property owner. Zall said in 2009 Amos White purchased the property and constructed a garage with a deck 15 feet deep located on the right side of the garage facing the rear lot line. (see plot plan in file) The staircase is the only portion of the deck encroaching on the rear setback. The stairs are approximately 27 feet from the rear property line. The stairs were constructed in a way so that the area under the deck could be used for storage of recreational vehicles and would have better access from the existing driveway.

The garage was built primarily for trail access for the snowmobile club. The garage was used by the trails and snowmobile club for storage of their equipment. The deck was used for recreational purposes. Most recently a Single Family Home (SFR) was constructed towards the front of the property. The house is under contract and is expected to close within the next 30 – 45 days. A certified plot plan was completed for the closing and that is when it was discovered the stairs were encroaching approximately 8 feet into the rear yard setback of 35 feet.

The purchaser would very much like to keep stairs where they are because that is the best location to gain access to the deck. Also, they would like to store a mobile home or recreational vehicle under the deck as well. The structure was built in 2009. The original building file was reviewed and the original permit did not show the deck in its current location or of the size which was built. Major asked if inspections were completed. Zall replied yes and a certificate of occupancy was issued. Mason asked if the stairs were there from the beginning. Zall replied yes.

If the size and location was an oversight of the building permit, the oversight will be corrected by Amos White. Zall said in the ZBA's consideration on whether or not to grant the variance, the fact the stairs were built without the correct building permit should not have any bearing on the decision. The variance should only be determined based upon the five criteria of whether or not the variance should be granted. The building permit aspect would be corrected after if the ZBA grants the variance.

Zall said the variance will not be contrary to the public interest. The purpose of the rear setback requirement of 35 feet is to prevent overcrowding, to prevent structures on adjacent property from being too close together. The property adjacent to the rear property line is common land of Crystalbrook Estates, consisting of 33 acres. The closest residential lot to the rear property line is approximately 415 feet. Since the property adjacent to the rear property line is common land that is subject to covenants prohibiting development, there will be no residential structures constructed near the applicant's rear property line. By allowing the stairs 27 feet from the rear lot line, there is no threat to the public health, safety or welfare. The character of the neighborhood will not be altered. The purpose of the ordinance would be maintained since no houses or structures can be built near the rear lot line.

The spirit of the ordinance will be observed. The general purpose of the ordinance is to promote the health, safety, morals and general welfare of the community by provided adequate areas between buildings by preventing overcrowding of land and avoiding undo concentration of population. The steps being 27 feet from the rear property line would not cause overcrowding. There would still be adequate spacing between buildings and adjacent properties. There's absolutely no adverse effect on health, safety or welfare to the adjacent properties or the general public.

In past cases the Supreme Court has stated for a variance to be contrary to the public interest, it must unduly and to a marked degree conflict with the purposes of the ordinance. The result in allowing the steps to remain 27 feet from the rear lot line will not cause any overcrowding or cause any structures to be too close to each other. The proposal clearly has no undo or marked conflict with the basic zoning objective of the ordinance requirement.

Values of surrounding properties will not be diminished by allowing the stairs to remain 27 feet from the property line and will have absolutely no effect to on neighboring property values.

Substantial justice will be done because leaving the steps at their current location provides the best access to the area under the deck for storage. The benefits outweigh any harm to the general public since there is no harm to the general public whatsoever.

The special condition of the property is that the property is isolated from the surrounding properties. To the north is the North Cemetery, to the west is 33 acres of open space for Crystalbrook Estates, and to the south is a residential property that is separated by a large hill. The abutter to the south cannot see the house or the barn and definitely not the steps. The isolation of the property is not affecting the abutters in any way. There is no fair and substantial relationship between the public purpose of the ordinance, which is to guard against overcrowding and maintaining reasonable distances between structures and the steps being 27 feet away from the property line versus 35 feet away. Allowing the steps to remain 27 feet away from the property line is reasonable since the steps have been there for over nine years and no benefits at all to an abutter or the general public would be gained by the removal of the staircase.

Research has been conducted on past variance setback denials. Those denials were for properties close together which had abutters that would be impacted. One case which was approved for a variance concerning setbacks was on 81 Jewett Lane for an existing garage. The property owner subdivided the lot to create backlots and then the driveway became a private road. By becoming a private road, the existing garage, which was there approximately ten years, violated the setback requirement for a backlot. The property owners created the problem with the subdivision and the ZBA granted the variance.

An application for an equitable waiver could have been applied for. However, due to the time constraints on the sale of the home, the application would not have met the ten-year requirement for such an application. The steps could be moved; however, they are in the best location to gain access to the storage area underneath the deck. Moving the steps would also eliminate the reason for the deck being created in the way it was. McMillan asked if the new owners want the steps to stay at their current location. Zall replied yes and asked the ZBA to consider approving the variance request. Zall assured the ZBA that if approved, the building permit would be straighten out if need be.

Major asked how the deck changed from a 4' x 4' deck, which is shown on the original submitted plans, to the size it is today. Zall replied that at times during construction modifications are done on site. The property owner probably wanted a larger deck so the snowmobile club could gather. Major asked if the reason the stairs could not be moved to the left or right was that the area for storage underneath the deck would be lost. Zall replied yes.

Belanger stated that under criteria 5b, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary. He asked how this application addresses criteria 5b. Zall replied that 5b does not apply if 5a does. The argument being made is criteria 5a applies; 5b is an alternative. MacMillan asked Zall to read criteria 5a. Zall said first you need to determine if there is a special condition to the property. The special condition to this property is that the property is isolated, with the Cemetery on one side, 33 acres of open space towards the rear, and a hill on the other side separating the closest abutter. Because of the isolation of the property, there is no fair and substantial relationship existing between the general public purpose, which is to prevent overcrowding, and allowing the steps to remain. It would not impact the intent of the ordinance provisions.

Belanger asked if the applicant realized the setback requirements of the ordinance are there for the protection of the neighbors and abutters. He asked how this application would not affect the abutters. Zall replied that the 33 acres of

open space at the rear is undevelopable due to covenants, the North Cemetery is on one side and a hill separates the neighbor on the other side. That neighbor, though not in attendance this evening, has expressed to us he has no issues with the application.

Major asked if it was testified that a permit was issued for the garage with a 4' x 4' deck, that the Building Department went to the site and gave approval for the larger deck. Zall replied yes. Major stated another point made was the setback encroachment to the rear yard was nominal. Zall agreed.

Belanger asked if the applicant would agree to a condition of approval that the deck would remain open. Zall replied the condition would be unreasonable since the steps are the only portion violating the setback. The applicant would agree to a condition of approval that the stairs could not be enclosed.

Major asked Setaro if the deck was inspected and if there was a Certificate of Occupancy (C/O) completed on the barn. Setaro replied that C/O's are completed for Single Family Homes or living space, not barns/garages. The department has no records showing whether the project was inspected or not.

**Spoke in-favor of the application**

Dave and Diane Montgomery, future owners of the property

Montgomery said they are moving from Colorado and would like the stairs to remain where they are located so that they can continue using the area under the deck for storage. The stairs do not affect anyone, especially because they are on the north side of the lot with the cemetery next door. Also, Montgomery said he is a former fire fighter and having an exit from the second floor on both sides of the garage, as this garage has, is better for egress reasons.

**No Further Questions from the Board and none from the floor – hearing portion of the case closed.**

Major stated the hearing portion for all cases this evening are closed; no further testimony and or public input will be accepted.

**Case ZBA 2019-001**

The discussion of the application of Amos White, property owner, for a Variance to Section XG.4.e, Minimum Rear Yard Width, of the Zoning Ordinance to approve an existing deck, where the landing & stairs are 27 feet from the rear setback width (required 35 feet) located at 304 Silver Lake Road. (Map 041, Lot 060) in the Residential Agricultural Zone

Belanger said a building permit was issued in 2009 and the project was inspected, including the stairs. The hardship to the owner is that a building permit was issued and he continued using the structure as built for almost ten years with no problems. The 35-foot setback requirement is violated; however, there are no properties or abutters impacted by the setback violation currently or in the future.

*Belanger moved for the following conditions:*

- 1. The stairs shall remain open and not be enclosed.*
- 2. No further setback encroachment shall occur.*

*Seconded by McMillian.*

*Motion unanimously approved.*

The ZBA had a discussion concerning findings of fact for the case and determined the findings of fact should include statements for the minimal setback intrusion and the lack of impact to any abutters.

*Major moved for the following findings of fact:*

- 1. The board finds that a building permit was issued and a final inspection was completed. The setback encroachment is minimal and the intrusion does not conflict with the purpose of the ordinance.*
- 2. The Board finds the property adjacent to the north consisting of the North Cemetery and the property adjacent to the northwest consisting of 33 acres of permanent open space would not be impacted by the strict application of the setback requirements of the ordinance now or in the future.*

*Seconded by Belanger.*

*Motion unanimously approved.*

**No further discussion.**

**Questions - Variance**

Question 1. The variance will not be contrary to the public interest

Question 2. The spirit of the ordinance is observed

Question 3. Substantial justice is done

Question 4. The values of surrounding properties are not diminished

Question 5a(1). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

Question 5a(2). And, the proposed use is a reasonable one.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a(1)	Question #5a(2)	Total Yes	Total No
Major	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Belanger	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Tsao	Yes	Yes	Yes	Yes	Yes	Yes	5	0
Durham	Yes	Yes	Yes	Yes	Yes	Yes	5	0
McMillan	Yes	Yes	Yes	Yes	Yes	Yes	5	0

**THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS OF FACT:**

**Conditions:**

1. The stairs shall remain open and not be enclosed.
2. No further setback encroachment shall occur.

**Findings of Fact:**

1. The board finds that a building permit was issued and a final inspection was completed. The setback encroachment is minimal and the intrusion does not conflict with the purpose of the ordinance.

2. The Board finds the property adjacent to the north consisting of the North Cemetery and the property adjacent to the northwest consisting of 33 acres of permanent open space would not be impacted by the strict application of the setback requirements now or in the future.

ZBA recessed at 7:50 pm.

ZBA reconvened at 7:55 pm

**Motion for Rehearing**

Moseley recused himself from the motion for rehearing of case ZBA2018-016

**Case ZBA 2018-016**

Discussion of the Motion for Rehearing for the application of Patricia Panciocco, for a Variance to Section XXI.1, Housing for Older Persons, Paragraph e, Minimum lot area & Section VIII Lot Definition of the Zoning Ordinance to permit the construction of a Housing for Older Persons Development on a noncontiguous 20 acre lot (contiguous lot required), property owned by James Prieto, located at 436, 441, 443, 445 and 447 Silver Lake Rd. (Map 045, Lot 041 and Map 046, Lots 007-010) and property owned by James Seely, located at 449 Silver Lake Rd. (Map 046, Lot 006) in the Agricultural Business Zone and Residential Agricultural Zone.

Major said along with the application for the rehearing the ZBA also received comments opposing the rehearing requested. (see file) McMillan said there is no new evidence presented in the rehearing request and in McMillan's opinion no one was asked to change their vote and feels there was no confusion when the members voted, trying to discredit the board members is not helpful. Belanger stated, upon thinking about the situation, the new evidence presented by McMillan should not have been considered. Major disagreed. The information was taken in and a

rehearing was conducted. Major stated that the ZBA has the right to re-open a case. McMillan said everyone had ample opportunity to speak to the new material presented. The information was not facts; it was clarification on different issues raised during the previous hearing.

Major said the ZBA corrected the process with the new information submitted and gave everyone a fair opportunity to address the information. McMillan said the last vote was 4 to 1; it was not close. Belanger stated the new information pertaining to the contiguity of the lot caused him to change his mind. The applicant is only asking for the new hearing based on the new evidence. Tsao said the rehearing occurred on the new evidence. Major stated the new information presented had no effect on his decision process; he still voted in favor of the application.

Mason said the rehearing arguments presented this evening state there was new information introduced, which it was, and we had a rehearing on the new information. How the information came to be is irrelevant. We had a rehearing. Belanger stated he was a court prosecutor for nine years and would vote in favor of the rehearing. Major asked what the new evidence was. Belanger replied the evidence that McMillan presented. Major said the ZBA already had a rehearing on that evidence. Tsao and Durham agreed. Belanger said he may not have been the only person who was swayed by the new evidence and only wished the applicant had come in with a revised plan for not developing the other side of the road. That application would have not been a problem. The fact that the new evidence was presented during deliberations and not in an open hearing swayed his decision. Major stated the information was presented in a public hearing and not deliberations. The ZBA went back to a public hearing.

MacMillan said it is not the prevue of the ZBA to advise applicants on how to apply and construct their applications. Tsao and Durham said they would vote against the rehearing. West stated there is no new evidence presented to warrant a rehearing. She would rather re-open the hearing so the application could be withdrawn and a final decision is not made which would impact future applications. Major stated he would vote to reopen the case. McMillan stated, to eliminate any confusion, the lot is not 20 contiguous acres. It never was and the application does not meet the spirit of the ordinance. Belanger stated that is why we grant variances. West said the word 'contiguous' is not waivable.

The ZBA voted on the motion for rehearing as follows:

Board Member	Yes	No
Major	Yes	
Belanger	Yes	
Tsao		No
Durham		No
McMillian		No

Motion for rehearing failed 2 to 3

### **Motion for Rehearing**

The ZBA members decided to discuss both rehearing requests for case ZBA2018-025 and ZBA2018-026 together. However, the ZBA would vote on each case individually.

### **Case ZBA2018-025**

Discussion of the Motion for Rehearing for the application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.b, Minimum Frontage on a public road of the Zoning Ordinance to permit the construction of a Single Family Home with 112.01 feet of frontage (required 200 feet) located on Broad Street (Map 014, Lot 048) in the Residential/Agricultural Zone.

### **Case ZBA 2018-026**

Discussion of the Motion for Rehearing for the application of John Halvatzes, Jr., for a Variance to Section XG, Zoning District, Paragraph 4.a, Minimum Lot Area of the Zoning Ordinance to permit the construction of a Single Family Home on a 1.69 acre lot (required 2 acres) located on Broad Street (Map 014, Lot 048) in the Residential/Agricultural Zone.

MacMillan asked if there was any new evidence being presented that would change the decision. MacMillan asked what the vote was during the hearing. Setaro replied 2 in-favor, 3 against. Mason said one of the rehearing arguments suggests the property is a lot of record and the ZBA did not treat the lot as such during the hearing.

Belanger said the lot is not unique. MacMillan agreed. MacMillan stated the lot was not a building lot of record. Moseley said the applicant also received a lower tax rate for many years because of that fact.

Major said within the motion for rehearing there was additional documentation submitted and asked if anyone was persuaded to grant the rehearing by the plot plan dated and approved in 1975. Belanger said the 1975 plot plan was the original plan. The property was subdivided after 1975 into the smaller lots which created the subject lot. Major asked, seeing the property was taxed as a separate lot at market value up until 1986, if that information should be considered during the decision process. MacMillan agreed at one time the lot was taxed as a buildable lot. Then the owners filed for an abatement because it was not a buildable lot and the taxes were reduced for approximately 30-plus years. The owners had ample time to address the issues with the lot.

Mason said if the variance was just for the lower acreage, he would have granted it, due to the fact that when the lot was formed it was over the minimum acreage requirement. However, the lot still did not have enough frontage to be considered a buildable lot. McGhee agreed and said the one of the Board's finding of fact said, "*The board finds the undersized nature of the lot was exacerbated by the insufficient amount of frontage.*"

Mason said he did not follow the argument within the motion for rehearing because the ZBA made a finding of fact based on a fact; it was not a finding. Major said a fair point might be that are findings were not as crisp as they might be.

A question was asked from the audience regarding the basis for the rehearing. Major replied the applicant needs to present additional evidence that the Board made an error in their decision. Major said for the record the ZBA is talking to a potential Board member and the conversation is not public input. The case is complicated because the vote was 2- 3.

Durham said she was quoted in the motion saying, "*It fits into the neighborhood,*" and then a realization was made that the lot could not fit a building block due to wetlands and lot width.

The ZBA voted on the motion for rehearing case ZBA2019-026 as follows:

Board Member	Yes	No
Major	Yes	
Belanger	Yes	
Tsao		No
Durham		No
McMillian		No

Motion for rehearing failed 2 to 3

The ZBA voted on the motion for rehearing case ZBA2019-025 as follows:

Board Member	Yes	No
Major	Yes	
Belanger	Yes	
Tsao		No
Durham		No
McMillian		No

Motion for rehearing failed 2 to 3

### **Review of Minutes**

*Major moved to approve the minutes of January 3, 2019*

*Seconded by Belanger.*

*Motion unanimously approved.*

*McMillian moved to approve the minutes of January 10, 2019*

*Seconded by Tsao.*

*Motion unanimously approved.*

**Meeting Adjourned**

The ZBA meeting adjourned at 8:15 pm.

Respectfully submitted, Donna L. Setaro, Building & Land Use Coordinator